

**Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Comcast Cable Communications, LLC |) | MB Docket No. 13-172, CSR 8814-E |
| |) | |
| Petition for Determination of Effective Competition |) | |
| in Templeton, Massachusetts (MA0127) |) | |
| |) | |

MEMORANDUM OPINION AND ORDER

Adopted: June 27, 2019

Released: June 27, 2019

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. The Massachusetts Department of Telecommunications and Cable (MDTC)¹ filed a petition pursuant to section 1.106 of the Commission's rules,² seeking reconsideration of the Media Bureau (Bureau) *Order* denying the MDTC's Form 328³ certification request regarding the Town of Templeton, Massachusetts.⁴ The denial was based on a finding that Comcast Cable Communications, LLC (Comcast) is subject to competing provider effective competition in Templeton.⁵ The MDTC contends that the Bureau should "determine that [Comcast] is not subject to effective competition in Templeton and recertify the MDTC to regulate basic cable service and equipment rates therein."⁶ Comcast did not file an opposition to the Petition, nor did it file a petition for reconsideration of the MDTC's Form 328. For the reasons set forth below, we grant the MDTC's Petition.

II. BACKGROUND

2. A franchising authority may regulate basic cable service tier rates and equipment only if the Commission finds that the cable system is not subject to "effective competition," as defined in section 623(l) of the Communications Act of 1934, as amended (Act).⁷ In June 2015, a Commission order adopted a rebuttable presumption that cable operators are subject to one type of effective competition,

¹ The MDTC is the franchising authority for rate regulation of cable services throughout the Commonwealth of Massachusetts.

² 47 CFR § 1.106.

³ See Massachusetts Department of Telecommunications and Cable, FCC Form 328, Certification of Franchising Authority to Regulate Basic Cable Service Rates and Initial Finding of Lack of Effective Competition (Dec. 8, 2015), available at <http://apps.fcc.gov/ecfs/proceeding/view?name=INBOX-76.910>.

⁴ See *Comcast Cable Communications, LLC, Petitions for Determination of Effective Competition in Various Massachusetts Communities*, Memorandum Opinion and Order, 31 FCC Rcd 3790 (MB 2016) (*Order*).

⁵ *Id.* The *Order* granted petitions for a determination of effective competition for various Massachusetts communities, but Templeton is the sole community at issue herein.

⁶ MDTC Petition for Reconsideration at 1 (filed May 23, 2016) (Petition).

⁷ See 47 U.S.C. § 543(a)(2)(A).

commonly referred to as “competing provider” effective competition.⁸ Accordingly, in the absence of a demonstration to the contrary, the Commission now presumes that cable systems are subject to competing provider effective competition, and it continues to presume that cable systems are not subject to any of the other three types of effective competition, as defined by section 623(l) of the Act and section 76.905 of the Commission’s rules.⁹

3. Section 623(l)(1)(B) provides that a cable operator is subject to competing provider effective competition if the franchise area is (a) served by at least two unaffiliated multichannel video programming distributors (MVPDs), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.¹⁰ Pursuant to the *Effective Competition Order*, absent evidence to the contrary, the Commission presumes that the competing provider test is met.¹¹ In that Order, the Commission required all franchising authorities with existing certifications that wished to remain certified to file a revised Form 328, including a showing rebutting the presumption of competing provider effective competition, by December 8, 2015.¹²

4. In 2013, Comcast filed a Petition for Determination of Effective Competition in which it claimed that there was competing provider effective competition in Templeton, based on competition from direct broadcast satellite (DBS) providers.¹³ The MDTC filed an opposition to the Comcast Petition, and Comcast filed a reply. In 2015, while the Comcast Petition remained pending and following the release of the *Effective Competition Order*, the MDTC filed timely certifications (FCC Form 328) for numerous Massachusetts communities, including the Town of Templeton.¹⁴ In its Form 328, the MDTC asserted that the number of Templeton households subscribing to DBS did not exceed the 15 percent threshold required for competing provider effective competition.¹⁵ Specifically, the MDTC argued that the DBS subscribership figure for Templeton should be reduced because of the high percentage of seasonal homes in that community.¹⁶ Therefore, the MDTC argued that its certification to regulate rates in Templeton remained valid.¹⁷ Upon consideration of the Form 328, as well as the underlying pleadings related to the Comcast Petition, the Bureau concluded “that the evidence the MDTC submitted regarding the seasonal homes was not specific or significant enough to demonstrate a lack of competing provider effective competition, particularly given the new presumption regarding the presence of this type of effective competition.”¹⁸ The MDTC subsequently filed its Petition, which Comcast did not oppose.

⁸ See *Amendment to the Commission’s Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act*, Report and Order, 30 FCC Rcd 6574 (2015) (*Effective Competition Order*).

⁹ See 47 U.S.C. § 543(l)(1); 47 CFR §§ 76.905(b), 76.906.

¹⁰ 47 U.S.C. § 543(l)(1)(B); see also 47 CFR § 76.905(b)(2).

¹¹ *Effective Competition Order*, 30 FCC Rcd at 6587, para. 17.

¹² *Effective Competition Order*, 30 FCC Rcd at 6587-93, paras. 17-28; *Notice of Effective Date of Revised Effective Competition Rules*, Public Notice, 30 FCC Rcd 10124, 10125 (2015).

¹³ Comcast Cable Commc’ns, LLC Petition for Determination of Effective Competition in Ashby, Mass., *et al.*, MB Docket No. 13-172, Petition for Special Relief (filed June 27, 2013) (*Comcast Petition*).

¹⁴ See *supra* n. 3.

¹⁵ MDTC Form 328, Attachment 3, Attachment to Question 6(a) at 3.

¹⁶ MDTC Form 328, Attachment 3, Attachment to Question 6(a) at 5.

¹⁷ *Id.*

¹⁸ *Order*, 31 FCC Rcd at 3792-3, para. 7.

III. DISCUSSION

5. We conclude that the MDTC has submitted sufficient evidence demonstrating that the second prong of the competing provider test is not satisfied and, therefore, effective competition is not present in the community of Templeton. In its Petition, the MDTC argues that a penetration rate of 14.56 percent in Templeton shows the absence of competing provider effective competition.¹⁹ Specifically, the MDTC reiterates the information presented in its Form 328, asserting that 3.98 percent of total housing units in Templeton are seasonal homes.²⁰ In addition, the MDTC asserts that the Bureau erroneously used the DBS subscribership numbers for Templeton filed as part of the 2013 Comcast Petition, rather than the more recent DBS subscribership numbers filed as part of MDTC's Form 328 in 2015.²¹ According to this more recent subscriber data and assuming that 3.98 percent are seasonal subscribers, there are a total of 420 non-seasonal DBS subscribers in Templeton, and dividing 420 by the total number of households in Templeton (2,882) yields a DBS penetration rate below the 15 percent threshold.²² Precedent dictates that seasonal homes, vacation homes, dormitories, and assisted living facilities do not qualify as "households" for purposes of the competing provider test.²³

6. We find the arguments in the Petition persuasive, and we note that Comcast failed to file a response to the Petition to rebut the MDTC's position that there is a lack of competing provider effective competition in Templeton. Upon reflection, we find that the MDTC has presented solid and persuasive evidence to clearly rebut the presumption of competing provider effective competition. The Bureau failed to accord appropriate consideration to the MDTC's evidence, which clearly demonstrates that the calculation in Comcast's underlying petition erroneously included seasonal homes. Once those homes are excluded from the calculation, it is apparent that the threshold requirement for competing provider effective competition has not been met. Therefore, the MDTC has presented sufficient information to support its request that we reverse our conclusion in the *Order*.²⁴

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the Massachusetts Department of Telecommunications and Cable Petition for Reconsideration **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that the Massachusetts Department of Telecommunications and Cable is recertified to regulate basic cable service and equipment rates in Templeton, MA.

¹⁹ Petition at 5.

²⁰ *Id.* (stating that in Templeton there are 125 seasonal homes out of a total of 3,139 housing units).

²¹ *Id.* at 5. The MDTC's Form 328 indicated a decline in Templeton DBS subscribers of 52 subscribers (489 – 437 = 52).

²² *Id.* (stating that the competing provider penetration rate in Templeton is 14.56 percent).

²³ *See id.* at 4.

²⁴ The MDTC asserts that "the Bureau did not 'promptly deny' the MDTC's Form 328 for Templeton so that the Form 328 would not become effective 30 days after filing," which it claims demonstrates "that the Bureau found that the MDTC's Form 328 met the applicable burden by rebutting the presumption as an initial matter." Petition at 6 (footnote omitted). We clarify that, rather, the *Effective Competition Order* stated that "[w]here currently certified franchising authorities file revised Form 328, their certifications will remain valid unless and until the Media Bureau issues a decision denying the new certification request." *See Effective Competition Order*, 30 FCC Rcd at 6593, para. 28. The *Order* was such a decision.

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.²⁵

FEDERAL COMMUNICATIONS COMMISSION

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²⁵ 47 CFR § 0.283.